



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 6, 1998

Ms. Rosalinda Fierro, CLA
Paralegal, Records Division
Office of the District Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

Ms. Tenley Aldredge
Assistant County Attorney
County of Travis
314 W. 11th Street, Suite 300
Austin, Texas 78767

OR98-2636

Dear Ms. Fierro and Ms. Aldredge:

The Travis County Sheriff's Office (the "sheriff") and the Travis County District Attorney (the "district attorney") have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119307 and ID# 120462.

The district attorney and the sheriff each received requests for records concerning a capital murder case that resulted in conviction. You assert that the records at issue are excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479

¹You do not indicate if these are the only records at issue or representative samples. If they are representative samples, we assume they are truly representative of all records at issue. We also note that the request received by the sheriff sought other information which the sheriff indicates does not exist. A governmental body is not required to provide information that does not exist. Open Records Decision No. 362 at 2 (1983).

(Tex.App.--Austin 1997, no pet.), *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You explain that the attorney for the individual convicted in this case has indicated she will file a writ of habeas corpus. Thus, we agree that litigation may be reasonably anticipated. However, section 552.103(a) does not except from disclosure records that the defendant previously has had access to. Once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). As the requestor specifically seeks all records that pertain to the capital murder prosecution, we assume that many of the records have already been seen by the defendant.

You also assert that section 552.108 protects the requested records from disclosure. You point to the fact that a writ of habeas corpus will likely be filed and argue that "release of the requested information would interfere with the detection, investigation or prosecution of crime." Section 552.108(a)(1) provides an exception from disclosure for information that is held by a law enforcement agency or prosecutor and that deals with the detection, investigation, or prosecution of crime, when release of such information would interfere with the detection, investigation, or prosecution of crime. Generally, a governmental body claiming an exception from disclosure under section 552.108(a)(1) must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *Ex parte Pruitt*, 551 S.W. 2d 706 (Tex. 1977). You have not shown how or why release of the requested information in this particular situation, where the investigation and criminal prosecution have concluded in a conviction, would interfere with law enforcement or prosecution. Thus, you have not shown the applicability of section 552.108 to these records.

We also note that some of the records at issue are medical records, access to which is governed by the Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes. Sections 5.08(b) and (c) of the MPA provide:

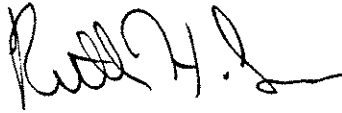
(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Section 5.08(j)(1) provides for release of medical records upon the patient's written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. The medical records may be released only as provided under the MPA.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 119307; ID# 120462

Enclosures: Submitted documents

cc: Mr. Karyl Krug
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(w/o enclosures)